

## **Berlin Public Prosecutor's Office**

276 Js 1560/15

Mr Volker-Hans Rey  
Thonasstr. 1  
69257 Wiesenbach

### **Preliminary investigation into Hans-Georg Maaßen for making a false allegation Your criminal charge filed on 17 September 2015**

Dear Sir or Madam

Having completed my legal investigations in respect of the above criminal charge, I hereby inform you as follows:

Section 152 (2) of the German Code of Criminal Procedure (StPO) requires a preliminary criminal investigation to be carried out in order to identify sufficient indication in fact of an actionable criminal act. The particulars you have furnished in support of your criminal charge do not however indicate such an act in any legal respects. In particular, there is no false allegation in accordance with section 164 of the German Criminal Code (StGB) which would enter into consideration.

Substantiating a case of making a false allegation in accordance with section 164 (1) StGB requires objectively false facts to be knowingly asserted to the detriment of an innocent party and appropriate for instituting an official action against them. However, in this case such an assertion of objective facts, which are contrary to the truth, by the reported individual cannot be identified.

According to the findings in this case, the reported individual filed a criminal charge on behalf of their authority against persons unknown on account of the publication of documents which are classified in part as secret by the Federal Office for the Protection of the Constitution as one of other offences taken into consideration. Both the classification in part of the documents as secret and their publication on the "netzpolitik.org" online platform and the explicit naming of the operators represent in themselves relevant facts, from which in any case initial suspicion arose in respect of unknown office-holders on account of a breach of official secrecy (section 353b StGB).

On the other hand, views, value judgements and legal interpretations on their own do not represent facts under the terms of section 164 StGB. In judging whether certain documents or circumstances represent state secrets under the terms of section 93 StGB and therefore aroused initial suspicion of treason (section 94 StGB) or the disclosure of state secrets (section 95 StGB), this involves a point of law which may only be judged by the relevant prosecuting authority. The legal assessment of the person lodging the charge is therefore not relevant to the issue of criminal liability in accordance with section 164 StGB. Hence, the fact that the reported individual or their authority advanced the legal opinion later on at the request of the Federal Public Prosecutor General, which was not ultimately carried, that the published documents constituted state secrets under the terms of section 93 StGB cannot be accommodated under the elements of section 164 StGB.

Since no criminal conduct by the reported individual was identifiable in any other legal respects over and above the standards stated by you either, the case was terminated pursuant to section 170 (2) StPO.

Yours faithfully

Dr. Palomo Suárez

Public Prosecutor

Certified by

[Signature]  
Wergin

Court Clerk